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Sean Riordan
General Manager
Communications Markets and Advocacy
Australian Competition and Consumer Commission
Via email

Dear Sean

Re proposed variation to the NBN Co Special Access Undertaking

Executive Summary

Aussie Broadband Limited (**Aussie Broadband**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission (**ACCC**) consultation paper (dated May 2022). Aussie Broadband recommends that the ACCC reject the proposed variation to the Special Access Undertaking (**SAU**) that NBN Co tabled.

Aussie Broadband notes that the then Minister of Communications confirmed the NBN network as 'fully operational' in December 2020. It is important to acknowledge the evolution in how the NBN is being used today by industry and the broader Australian community against its initial concepts. For example, connectivity was paramount during the peak of the COVID-19 pandemic in 2020/21 as industry, education, essential services, and our communities shifted to working and learning from home; a reliable and stable connection was essential. As we emerge from lockdowns, Australia has shifted in its use and reliance on connectivity, including the NBN.

Aussie Broadband believes that the long-term interest of the end-user (**LTIE**) are not adequately considered in this variation of the SAU. We believe that there are deficiencies in the fundamental pricing model, service quality standards, unsubstantiated links to proposed cost increases, and a lack of transparency specifically focused on the efficient operations of a government business enterprise which is also the monopolistic wholesaler.

It is imperative that the SAU is driven by the principles of the LTIE including providing a competitive market with reduced uncertainty (for both the RSP and the end-user) supported by continued efficient investment as technology develops.

We urge NBN Co to focus on core services and to make increased technology types available to as many households and businesses as possible and make the required, efficient investment into the network. Aussie Broadband notes NBN Co's previous comments cited competition risks posed by Starlink and mobile broadband, albeit we believe that NBN will remain the primary and premium product provided we get this SAU correct. This includes offering certainty to the end-user and RSP alike, including baseline service quality standards that are not commercially negotiated away for discounted pricing and continued investment.

Overall Observations

Aussie Broadband understands the challenges facing NBN Co and are overall supportive of the proposed approach and the requirement for NBN Co to grow revenue over time. However, Aussie Broadband would much prefer to be able to incentivise customers to higher price plans through added value rather than forcing them onto inappropriate plans for their needs due to wholesale cost structures.

Aussie Broadband believes that the right incentives for retail service providers (**RSPs**) will lead to a greater take-up of higher speed plans, generating more revenue for NBN Co, and providing more flexibility to react to affordability concerns. Furthermore, we believe that the more incentive NBN Co can provide for RSPs to move customers to higher speed plans, the less attractive competing networks will be, which will result in a broader base of customers for NBN Co to recover costs.

Case for change– customer behavioural and market structural changes

Research suggests two barriers impede high-speed plan adoption today:

1) Cost of Ownership (monthly cost) and
2) Technology availability.

Recent campaigns (including *Focus on 50*, *Focus on Fast*) and research simulations show that where the technology availability barrier is removed (e.g., the *Fibre on Demand* initiative), and where cost reduces, consumers self-select to move to higher speed plans. Key cost sensitivity (at a market level) is found at the $100 per month retail cost, with notable declines (for any technology type) post $100.

Therefore, NBN Co pricing that supports higher speed take-up below the $100 cost-point would stimulate significant structural changes in the underlying technology base, enabling greater economic returns and demonstrating return on investment (**ROI**) on the Network Investment Plan.

Simulation using Aussie Broadband's customer base, suggests that achieving these structural shifts requires an AVC-100 Wholesale Price of no greater than $55 wholesale (with preference lying in the lower range of $50-$52). Doing so delivers positive revenue outcomes to NBN Co vs today.

Aussie Broadband also proposes that speeds above 100/20 should be less than $10 per month wholesale increments as this will allow RSPs to maintain/increase margin and incentivise take-up.

NBN Co has artificially restricted the upload speed on residential plans, however, Aussie Broadband believes that higher upload plan options should be available to all customers for minimal incremental cost. We believe there is no incremental cost to NBN Co to provide higher upload speeds and this artificial barrier for residential customers should be removed. The volume of residential take-up of higher upload plans (at a small increment) will likely offset the premium businesses pay for the upload capability.

Impediments and concerns for RSP growth

Aussie Broadband has concerns around the CPI + 3% price increase capability, particularly the legislative mechanisms that will be in place to police this/ hold NBN Co to account. Cost of living pressure is forecast to increase over the near-to-medium term with a question looming re: NBN's accountability either easing/ or increasing this pressure at a household level. We also feel that the proposed Revenue Cap is largely ineffective, particularly if mobile network operators (**MNO's**) move services off the NBN Co network. Therefore, NBN Co relies on greater revenue from a smaller base of customers.

From a service level perspective, greater confidence in NBN Co's ability to assure and improve quality of service is desired. Aussie Broadband, akin to other RSPs, lose customers due to NBN Co network outages as customers do not differentiate on the cause of the outage. It is desirable that we understand how increased revenue will benefit the quality of service, not just providing NBN Co with the ability to service debt etc.

Pricing and product constructs

Aussie Broadband continues to advocate for the removal of CVC. We agree with the ACCC that the retention of CVC will likely lead to cost escalations and fail to provide consistency for RSPs and, importantly, the end-user. We welcome the introduction of AVC-only pricing on some plans in the proposed SAU, however we encourage the NBN to look at alternatives that move the CVC variable cost to a fixed-cost AVC in the short to medium term. Such a move would provide greater pricing certainty for RSPs and end-users alike.

In addition, the proposed SAU does not provide sufficient justification for NBN Co's proposed pricing model. We note that the ACCC equally identified that CPI + x% does not consider the LTIE.

Controls on prices and revenue

1. What are your views on the various elements of the price control proposals put forward by NBN Co for the SAU variation?

Aussie Broadband welcomes the introduction of a fixed price on AVC only, removing the CVC charge for higher speed services from 100 Mbps and higher. We believe this enhances the stability of the cost of providing these services and, in turn, the retail pricing.

Further, we endorse the proposed change in the overage calculation, so that charges are based on the utilisation from the provisioning level. We believe this approach will result in a fairer way to charge for CVC overage and will effectively remove the penalty for over-provisioning capacity which may lead to excessive provisioning of the CVC. Aussie Broadband also notes that NBN Co data reveals that the level of CVC headroom has been significant. As a result, we are unclear how NBN Co policy will ensure the effective use of resources to avoid further cost increases. We are particularly concerned in how this may translate into price increases via the proposed recovery of accumulated losses mechanism.

Aussie Broadband agrees with the ACCC's observations that the retention of two-part pricing (AVC+CVC) for the low-speed tiers will be detrimental to the Australian fixed broadband market, as there are more than 80% of NBN Co customers currently using these services[1]. This is particularly the case as the proposal seeks to apply an annual escalation on the AVC while keeping the CVC fixed at $8 per Mbps. By applying the assumptions from the ACCC model of projected access costs[2] with annual data growth of 13% and an annual aggregate CPI of 2.5%, Aussie Broadband calculates an average increase in NBN wholesale pricing of approximately 6% per annum over the next five (5) years for these services. However, we note that naturally this escalation will be higher with a larger increase in data consumption indicated by the Bureau of Communications & Arts Research (BCAR) [3].

Aussie Broadband also highlights that an annual escalation in wholesale price of 6% or more for NBN Co services is severely adverse for consumers, compared to the downward change from other utility services reported by the Australian Energy Market Commission (**AEMC**)[4] – refer to Figure 1 below.

1 "NBN Wholesale Market Indicators Report", ACCC, 19 May 2022 https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/march-quarter-2022-report

2 "ACCC model of NBN SAU projected access costs", ACCC Consultation Paper, 23 May 2022, https://www.accc.gov.au/system/files/ACCC%20model%20of%20NBN%20SAU%20projected%20access%20costs.xlsx

3 "Demand for fixed-line broadband in Australia 2018–2028", Bureau of Communications and Arts Research, July 2020 https://www.infrastructure.gov.au/media-centre/publications/demand-fixed-line-broadband-australia-2018-2028-working-paper

4 "Residential electricity price trend 2021", AEMC, 25 November 2021 https://www.aemc.gov.au/market-reviews-advice/residential-electricity-price-trends-2021

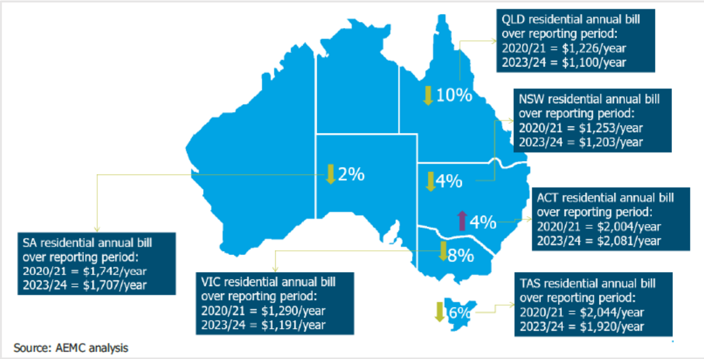

Figure 1. Trends in annual residential electricity bills over three (3) year period[4].

At Aussie Broadband, we endeavour to provide quality broadband services at a fair price to the Australian market. We achieve this by investing in our people and technology efficiently that supports our customers. As a result, we have been able to sustain our customer charges to a level that has prevented the need to increase our prices annually. Throughout the course of offering NBN Co services since 2013, we have only increased user charges three times, with an average of approximately 10%. Therefore, Aussie Broadband believes that an annual increase of 6% or more will have a detrimental impact on the reliance on NBN Co as the broadband service of choice and encourage the adoption of other technology, such as 5G.

From our assessment, Aussie Broadband believes there will be an increase in our wholesale costs due to transitioning from NBN Co's current pricing construct to their proposed new one. We estimate this increase to be approximately 6% for our current customer base. We also agree with ACCC's observations that if NBN Co prices for low-speed services are allowed to increase, it is expected that such prices will be equal to that of the Home Fast 100 Mbps service. Further, we are concerned that the convergence point may differ between RSP depending on the usage pattern of their customer base. This will result in uncertainty as it remains clear as to how this will be managed. Moreover, we lack clarity on whether these services will be declared as AVC-only services, or whether it will require each individual RSP's discretion to manage the migration to avoid excessive cost. We believe that this presents a risk in promoting and maintaining the LTIE.

2. Do you consider the proposals to be reasonable and likely to promote the LTIE, and if not, why not and what changes would be required to achieve those outcomes?

As outlined above, Aussie Broadband does not believe the current proposal will promote the LTIE, particularly regarding the low-speed tiers serving the market as affordable NBN broadband services. A rapid escalation in cost as per NBN Co current proposals will result in unaffordable services, effectively forcing consumers to migrate to higher speed tiers based on price as opposed to their needs.

Aussie Broadband's position is that NBN Co's proposal for a CVC allowance of 0.1Mbps for 25 Mbps services is inadequate and fails to promote the LTIE. We suggest this CVC allowance will result in significant cost escalation for consumers, as it is especially sensitive to data growth and fails to consider the surge in usage pattern which we have witnessed over recent years. Aussie Broadband forecasts that it will significantly impact on more than 1.1 million homes using the 25 Mbps services[5].

It is also worth noting that the ACCC model of projected access costs[6] indicates the utilisation for this speed tier is 1.41 Mbps, and the utilisation for the 50 Mbps service is 2.79 Mbps, which is proposed to

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5 "NBN Wholesale Market Indicators Report", ACCC, 19 May 2022 https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/march-quarter-2022-report

6 "ACCC model of NBN SAU projected access costs", ACCC Consultation Paper, 23 May 2022, https://www.accc.gov.au/system/files/ACCC%20model%20of%20NBN%20SAU%20projected%20access%20costs.xlsx

have a CVC inclusion of 2.45 Mbps. Therefore, we believe the CVC capacity included in the 25 Mbps service should be raised to 1 Mbps or higher.

As the recent Wholesale Market Indicators Report[7] indicated, more than 80% of NBN customers are using the low-speed tiers of 50 Mbps or lower[8]. As a result, Aussie Broadband believe there is an option to moderate the increase in cost by removing the escalation on the AVC and increasing the CVC allowance to approximately 75% of the data usage growth for these low-speed tiers. This will ensure that these low-speed tiers remain affordable for all Australian consumers.

Finally, Aussie Broadband does not consider any correlation between the cost to NBN Co in providing these services and the CPI put forward to suggest it should be a parameter for determining the future wholesale prices.

Building block model – general approach

Aussie Broadband agrees with ACCC that the revenue cap will fail to act as a binding constraint on the NBN Co or provide an adequate basis for setting prices, creating uncertainty regarding the treatment of accumulated losses. We believe that the premise of a Building Block Model (**BBM**) is to regulate the revenue cap and subsequent user charges. As such, the BBM ensures a service provider can recover a reasonable margin to provide a return on investment and capital to shareholders, but in turn is not overcompensated for providing its regulated services.

As a result, we question whether NBN Co should be able to receive revenue in a manner that may allow for an over recovery relative to annual building block revenue requirements (**ABBRR**). NBN Co should be limited in their annual revenue earnings, irrespective of the initial cost recovery account (**ICRA**) balance remaining positive or not. This same premise can be applied to carrying forward any shortfall, which we note that ACCC acknowledges will occur. We believe this should not be happening if NBN Co's cost base and revenue cap is set correctly and their user charges are able to be increased.

Further, Aussie Broadband questions NBN Co's ability to set their pricing independently to the cost base and revenue cap. Arguably NBN Co's price structure, price levels and projected price paths should be informed by the outputs of a BBM regulation, particularly in light of their proposed escalation of pricing practices, including volumetric CVC charging. Without this link, we question the ability of NBN Co to potentially generate revenue via offsetting historical loss which is independent of their underlying costs. We also believe that this approach will likely result in NBN Co recovering more revenue than it needs to operate the network efficiently which fails to promote the LTIE.

Recovery of accumulated losses

Aussie Broadband believes the lack of clarity regarding NBN Co's proposed approach to recovering their accumulated loss by way of the unders-overs mechanism creates uncertainty regarding longer-term price levels. This includes how these amounts will be accounted for in a future regulatory framework.

As per our comments above, a BBM regulation should serve to ensure NBN Co receive a revenue margin in a manner that is both reasonable and regulated. As a result, we hold particular concern that NBN Co's revenue is not constrained by a revenue cap where there is a positive ICRA. Further, that their revenue can be generated independently of costs which subsequently impacts the determination of amounts going into or coming out of the unders-overs account.
Aussie Broadband understands that NBN Co will earn less than the revenue cap for a significant period unless they generate significant revenue increases. However, we also note ACCC's assertion that the

7 "NBN Wholesale Market Indicators Report", ACCC, 19 May 2022 https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/march-quarter-2022-report

8 ibid

increase in access revenues from NBN Co's basic residential grade products would reduce incentives for NBN Co to develop new products and rebalance prices to encourage efficient use of NBN. We consider ACCC's observation that NBN Co's proposed approach will result in a significant residual ICRA amount remaining at 2040 despite the intention to recover the accumulated loss. Further, their suggested regulatory arrangements could mean NBN Co recover more revenue than they need to operate the network efficiently in the future, which could lead to higher prices in the long-term.

Given the diverse outcomes identified from NBN Co's proposed treatment of accumulated losses, it is clear greater clarity and certainty of NBN Co's proposed revenue cap and approach to the recovery of accumulated loss is required, particularly its future application and weighted consideration impact on LTIE.

Expenditure criteria

Aussie Broadband agrees with ACCC's observation that the Expenditure Objectives and Expenditure Factors are widespread and provide no guidance on the weight of consideration to be applied to each, which raises concern regarding undermining LTIE. We believe their extensive and subjective nature will result in ambiguity regarding how they should be practically applied and how each objective or factor can be assessed in terms of successful application. Aussie Broadband suggests that the Expenditure Objectives and Expenditure Factors should reflect criteria that can be measured and monitored.

Regarding the Expenditure Objectives, Aussie Broadband notes that NBN Co's OPEX and CAPEX forecasts are to 'reasonably reflect the expenditure that a prudent and efficient operator' would incur in achieving the Expenditure Objectives. However, we note that the objectives themselves make no reference to being prudent or efficient. Further, given the Expenditure Factors seek to forecast OPEX and CAPEX, Aussie Broadband questions whether NBN Co should include reference to the regulated asset base as a factor to be considered. We also note that while 'historical trends' are included as a factor, there is no requirement to consider future planning and probable expenses.

Aussie Broadband considers the proposed triggers for cost pass-through applications, including required response to Government-directed projects and regulatory change events, will allow NBN Co to recover from user increases in costs that could be greater than those necessary to promote the LTIE. We suggest there is an opportunity to predict or track this type of expenditure over time to set spending in real terms to reveal tangible potential increases in cost. This may also include comparing historical and actual costs and cost trends to provide supporting data to inform these types of expenditure decisions.

Finally, Aussie Broadband disagrees with applying less stringent criteria to determining forecast expenditures on government-directed projects. We propose that this expenditure should be assessed through the Building Block Model as separate OPEX to NBN Co's recurrent operating costs. We believe that adding reasonable forecasted funds as OPEX in advance of actual expenditure and only allowing for actual recovery of expenditure when a trigger arises, will not only create a smoothed level of spending over a long-term cost profile but contribute to promoting the LTIE.

General regulatory structure and replacement module assessment process

We expected that NBN Co would provide the five (5) years forecast information to provide certainty to stakeholders. NBN Co's proposition of a regulatory period of two (2) years appears counter-intuitive and inefficient. Aussie Broadband notes the extended period and extensive resources invested for this SAU; based on the timelines proposed in s4.6, we could effectively be in this position again in 12 months' time. This is not an efficient use of resources from NBN, the ACCC or industry.

Service Quality

Aussie Broadband is concerned that the proposed variation will lead to a decrease in service quality and experiences of our customers. NBN Co's quality policy cites that the 'customer experience is at the core of delivering quality outcomes'[9] of its decisions – however, this SAU does not represent that.

We look forward to the opportunity to work with NBN Co for a mutually beneficial SAU for industry and our customers.

Warm regards,

Andrew Webster
General Manager Risk, Compliance & Regulatory Affairs

[9] Nbn Quality Policy. 05 Nov 2020. https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/policies/nbn-quality-policy.pdf